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Letter dated 17 February 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 10 April 2002 (S/2002/397). The Counter-Terrorism Committee has received the attached supplementary report from Botswana, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 13 February 2004 from the Deputy Permanent Representative of Botswana to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

On instructions from my Government, I have the honour to transmit herewith a supplementary report pursuant to paragraph 6 of Security Council resolution 1373 (2001) of 28 September 2001 (see enclosure). I should be grateful if you would have the present letter and its annex circulated as a document of the Security Council.

(*Signed*) Leutlwetse **Mmualefe**
Deputy Permanent Representative

Enclosure

REPORT BY THE GOVERNMENT OF BOTSWANA PURSUANT TO SECURITY COUNCIL RESOLUTION 1373 (2001)

INTRODUCTION

The Government of Botswana is strongly committed to the full and effective implementation of the Security Council resolutions on terrorism. In this regard, the Government has established a National Anti-Terrorism Committee, and its mandate is to ensure that Botswana fully abides by its obligations under these resolutions, in particular resolution 1373 (2001).

The Anti-Terrorism Committee is composed of the following:

i) The Ministry of Foreign Affairs which chairs the Committee
ii) The Office of the President
iii) The Attorney General
iv) The Department of Civil Aviation
v) Botswana Defence Force
vi) Botswana Police
vii) The Department of Customs and Excise
viii) The Department of Immigration and Citizenship
ix) Bank of Botswana.

The Committee has met several times and taken a number of steps to ensure that all the provisions of resolution 1373 (2001) are fully implemented. These steps include the enforcement of financial laws and regulations, immigration control, aviation security, asylum control and other law enforcement measures.

OPERATIVE PARAGRAPH 1

MEASURES TAKEN TO PREVENT AND SUPPRESS THE FINANCING OF TERRORIST ACTS

Sub-Paragraph a): Within the context of Botswana it must be noted that terrorism per se has not been criminalised. What has been criminalised would be acts that may be considered related to "terrorist acts". The problem here is that we are therefore operating within the precincts of an undefined concept.

However where there are any such criminal acts, as may amount to terrorist acts, parties to the commission thereof would be liable to prosecution as principal offenders, accomplices or persons aiding, abetting or counselling others to commit such acts. For instance, if one were to attempt , aid, abet, or counsel any other person to commit certain acts like piracy, hijacking, conspiring to commit evident offences abroad or various subversive activities inimical to the public order and security of Botswana etc, that person would be liable to prosecution.

The Government of Botswana has instituted strict measures to ensure that funds owned by the nationals of Botswana or funds in the territory of Botswana are not used to support terrorist activities. Following the terrorists attacks which took place in New York, Washington, D.C. and Pennyslvania on 11 September 2001, Bank of Botswana issued a circular to all financial institutions in Botswana with clear instruction that they should take all measures necessary to ensure that they do not provide safe harbour for terrorist actions or activities and to freeze without delay funds and other financial assets of persons who may be suspected of participating in terrorist activities. Circulars issued by the Bank of Botswana to financial institutions are not legal instruments. They are administrative measures issued within the ordinary practice and custom of a central bank, and within its powers as a supervisory authority.

Sub-Paragraph b): As indicated at paragraph 1(a) where a person aids, abets , counsels or procures another to commit an offence, such a person would be liable to prosecution in the same manner as if he were a principal offender. In the present context therefore, any person who provides or collects funds in the territory of Botswana towards the commission of any offence would be liable to prosecution. This would thus cover acts that would fall within acts classified as terrorist acts. Such acts would become clear where they are referred to under specific paragraphs below.

Sub- Paragraph c): Generally under the various laws that may deal with the seizure or confiscation of assets, there may be established, by evidence, the linkage between the assets or property, with the commission of an offence or the furtherance of plans or objectives to commit an offence. As such law allows freezing or seizure of assets being shown to be proceeds of crime.

Similarly instrumentalities kept or used for the commission of an offence would be liable to seizure or freezing.

The Government of Botswana is happy to report that so far, no activities have been detected to suggest that Botswana's financial institutions could have been used to make funds, financial assets or financial services available, directly or indirectly for the benefit of persons involved in terrorist activities. This is largely due to the country's strict laws on money laundering.

The measures in place include a number of laws aimed at criminalising money laundering and enhancing the capacity of the law enforcement agencies to deal with this crime. The first such law is the **PROCEEDS OF SERIOUS CRIMES ACT** of 1990, the object of which is to deprive persons convicted of serious crimes of the benefit or rewards gained from such crimes. The Act explicitly proscribe the conduct of money laundering and prescribed a relatively high sentence upon conviction.

Section 2(3) © of the Proceeds of Serious Crime Act (Act 19/1990) enables the seizure of assets which are ostensibly not proceeds of crime. In this context, where a person receives payment, reward or derives a pecuniary advantage arising out of that person's conduct for the purposes of carrying out or furthering criminal activities, such payment, reward etc shall be deemed to be proceeds of crimes. They would thus be liable to seizure under the Proceeds of Serious Crimes Act.

During the same year, Botswana enacted the **MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT.** The import of this legislation is to facilitate mutual assistance between Botswana and countries which have reciprocal applications of its provisions. It is an instrument through which the primary objectives of the Proceeds of Serious Crimes Act are executed across our borders. To a great extent, it runs parallel to the Extraditions Act of 1990.

Additionally, and subsequently thereto, Botswana enacted the Corruption and Economic Crime Act in 1994, and the Banking Act in 1995. By the former Act, a Directorate on Corruption and Economic Crime was established which is a law enforcement agency charged with the task of investigating and prosecuting

serious economic crimes, corruption, and money laundering offences.

The Banking Act of 1995 provides for, amongst others, unfettered access of the law enforcement agencies to information on bank accounts and entrenches the "know your customer principle" and creates an obligation on banks and their external auditors to report suspicious transactions to the Central Bank and or law enforcement agencies.

The Banking Act of 1995 also incorporates guidelines on the identification of customers, the proper keeping of customers records, reporting of suspicious transactions and cooperation with law enforcement agencies. These measures form the core elements of Botswana's anti-money laundering programme.

Botswana has also paid particular attention to the requirements that measures be undertaken to detect and monitor cash or capital movements through its borders (without impeding the freedom of proper capital transfers). To this end, travellers in and out of Botswana are required to declare any funds equivalent to P10 000 (U$1 = P7) or more in their possession at any point of entry or exit. Similarly, banks are required to complete Forms for outward transfers of money equivalent to P10 000 or more.

The Banking Act also allows Bank of Botswana to share information with other supervisory authorities around the world.

The Directorate on Corruption and Economic Crime and the Central Bank have developed an effective working relationship on matters relating to financial crimes, and such relationship has contributed towards the development of formal measures to combat money laundering activities

In response to a recognition by Government that exchange controls hinder economic development, Botswana abolished exchange controls beginning 9 February 1999. However, it was recoghised that some aspects of the exchange control arrangements served to hinder money laundering, as such, the Directive issued to banks

by the Central Bank following the abolition of exchange controls ensured that these aspects were retained.

Bank of Botswana has also recently issued revised guidelines establishing minimum standards and practices by financial institutions for effective anti-money laundering programmes.

Sub- Paragraph d): The laws of Botswana prohibit any person within Botswana from aiding, abetting, counselling or procuring others to commit offences or conspire to commit offences. Consequently, if any person within Botswana aids, abets, counsels or procures any other person, by way of availing finances or other resources to commit any criminal act, including acts that would amount to terrorist acts, they are would be liable to prosecution, as principal offenders. They would be sentenced to the prescribed penalty upon conviction, depending on the nature of the offence at hand.

OPERATIVE PARAGRAPH 2

Sub-Paragraph a): Botswana has never provided any form of assistance or support to entities or persons involved in terrorist activities. In addition, no nationals of Botswana are known to have participated in the activities or to be members of any terrorist group.

The laws of Botswana do not specifically prohibit recruitment to terrorist groups. The nearest prohibition to recruitment to such groups would be that relating to membership of an unlawful society (under section 68 of the Penal Code, the penalty for which is seven years imprisonment) and managing an unlawful society (under section 67 of the Penal Code, the penalty for which is years imprisonment). Such societies are unlawful when their purposes are to engage in subversive activities including levying war on the Government or any inhabitants of Botswana, subverting or promoting subversion of Government or its officials, interfering with the resistance to the administration of the law, disturbing or inciting disturbance of peace and order in any part of Botswana etc, or societies as may be declared unlawful by the President. They must have a minimum membership of ten persons.

Additionally the Foreign Enlistment Act prohibit any person within Botswana from preparing or fitting out or joining an expedition against any country without the permission of the President.(See Section 7 thereof).

Botswana has in addition to the laws mentioned above, also enacted the statutes hereunder listed to enable her to meet her international obligations to combat crime in all its forms, including offences of terrorism:

(i) Arms and Ammunition Act. Cap. 24:01

This statute limits access to firearms by persons other than the disciplined forces. The Act empowers the Commissioner of Police to regulate the issuing of arms Certificates. Under the same Act, Botswana Police is empowered to investigate cases involving Arms and ammunition trafficking.

(ii) Extradition Act, 1990 (No. 18/1990) & Extradition (Amendment) Act, 1997 (No. 9/1997)

This piece of legislation deals with extradition to and from Botswana of fugitive offenders.

(iii) Drugs and Related Substances act (No. 18/1992)

This Act is aimed at combating the incidents of drug smuggling.

We believe that the aforelisted statutory acts have contributed in no small measure to the prevention of the commission of terrorist acts in Botswana; enabled us to prohibit the recruitment of the nationals of Botswana to join terrorist groups; and prevented the supply of weapons to terrorists through the territory of Botswana.

Measures Regarding the Movements of Goods through the territory of Botswana

The Customs and Excise Duty Act of 1970 empowers the Botswana Customs Authorities to impose restrictions on the importation of

any materials that do not comply with laws of Botswana. Customs officers are empowered by the said Act to stop any vehicle or aircraft including persons for search to determine whether the goods being carried or conveyed are in compliance with the provisions of the Act or any other Botswana Laws. The goods which cannot be allowed through our borders include controlled diamonds, Arms and Ammunition, controlled drugs and money laundering.

In discharging this function, the Customs Authorities collaborate with other Law enforcement agencies such as the Police, Immigration, and the Directorate on Corruption and Economic Crime. The Authorities also collaborate with their counterparts regionally and internationally.

Regional and International Cooperation

Sub-Paragraph b): Botswana is a member of the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO). The establishment of SARPCCO has allowed the countries of Southern Africa to share information in connection with criminal activities, investigations and proceedings relating to all kinds of crimes, including acts of terrorism. For example, Member States have recently agreed to conduct what is called Project Diamante Operation. This operation allows Member countries to work together and share information on crimes involving stolen motor vehicles, arms and ammunitions trafficking and drug smuggling and trafficking in the region.

Botswana is also a member of Interpol and participates in all ICP Interpol General Assembly Meetings. For example, we participated at the recent ICPO Interpol General Assembly Meeting, and were party to the decision of the meeting which called upon all Member States to collaborate to the fullest extent permitted by law, in identifying individuals who may have assisted in committing acts of terrorism and bringing them to justice.

Aviation Security

Botswana took immediate measures after the 11th September 2001 attacks to reinforce aviation security at its Airports. Special

attention has been given to limiting access to restricted areas and to remedy deficiencies in the screening of passengers and their baggage. The access points have been reduced at night for ensuring better and effective control. We have 100% screening of hold baggage.

The situation is kept under constant review with the help of the airlines and the non-scheduled operators. Security awareness lectures and training for security personnel is also being undertaken. A report on the aviation security measures undertaken has been submitted to the Regional Director, International Civil Aviation Organisation (ICAO) in Nairobi, Kenya.

Botswana's Aviation Security Act 1993 incorporates the main ICAO Aviation Security Conventions namely:

1. Tokyo Convention on Offences and Certain Other Acts committed on Board Aircraft (signed in Tokyo on the 14th September 1963).

2. The Hague Convention for the Suppression of Unlawful Seizure of Aircraft (signed at the Hague on the 16th of December 1970) and,

3. Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (signed at Montreal on the 23rd of September 1971).

This Act provides for stringent penalties for persons caught committing or attempting to commit, aid, abet, counsel or procure persons to commit offences against civil aviation.

Immigration Control

Sub-Paragraph c): Botswana has established very strict regulations on the movement of persons through its borders. We have very strict requirements regulating the movements of people to and from Botswana.

Sub-Paragraph d): As mentioned earlier Botswana does not have legislation that is specifically meant to combat terrorism. However,

the Botswana Police's Security Intelligence Service Branch (SIS) has the mandate to investigate terrorist activities in Botswana. SIS liaises with other Intelligence Services in identifying people associated with the threat of terrorism within the country and outside its borders . To this end, the branch has signed protocols with a number of sister services but even where there are no documented agreements on cooperation, the need for exchange of information has always been mutually recognized and acted upon.

The branch also benefits from information passed to it by the local Interpol National Central Bureau on matters which the former deem to require the attention of SIS. The arrangement is such that if SIS identifies suspected perpetrators of the threat of terrorism or those who collude with them, it would inform the state authorities for appropriate action which would normally be revocation of residential status for foreigners and criminal prosecution under the Penal Code section dealing with aiding and abetting people to commit a crime for both citizens and foreigners.

Where Botswana citizens have committed crimes outside her borders or a foreign national has committed a crime outside Botswana and is now resident in Botswana, he or she will be handed over to the country in which the crime was committed following the protocols of the applicable extradition treaty where such treaty has been signed by the two countries.

In addition, under section 64 (1)© of the Penal Code the High Court has the jurisdiction to try any person for any act of piracy committed by a citizen of Botswana on the high seas, in a foreign port or harbour or in foreign territorial tidal waters. The punishment therefore would be a maximum of life imprisonment or death in the case where life threatening assaults were used.

Furthermore, a person who commits hijacking and kindred offences, whether in or out of Botswana, would be liable to prosecution in Botswana, for which punishment on conviction would be imprisonment for life.

On the other hand, where any person conspires with another to commit an offence outside the territory of Botswana they would be liable to a fine or imprisonment not exceeding 3 years (see section

61(1) of the Penal Code). Equally liable would be those who, while in Botswana, incite, instigate, command or procure others to commit such offences. The offences in question are acts of violence prescribed under the foreign territory, which acts would have been criminal if committed in Botswana. It would not matter whether the person was a citizen of Botswana or not so long as the conspiracy, instigation, incitement , command, or procuration took place in Botswana.

OPERATIVE PARAGRAPH 3

Sub-Paragraph a),b),c): Botswana is part of a number of Multilateral arrangements which contribute towards prevention and suppression of terrorism. These Multilateral arrangements include the Interstate Defence and Security Committee among SADC countries where all kinds of threats against state security are considered. The bilateral arrangements are in the form of Joint Permanent Commissions on Defence and Security between most SADC countries.
We have long had this kind of arrangement with Zimbabwe, Zambia, South Africa and Namibia. Arrangements to establish similar relations with other SADC countries are under consideration.

Anti Terrorism Conventions

Sub-Paragraph d): Botswana has signed and ratified the following anti-terrorism conventions:

- the 1963 Tokyo convention on Offences and certain other Acts Committed on Board Aircraft;
- the 1970 Hague Convention for the Unlawful Seizure of Aircraft and;
- the 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civilian Aviation;
- Convention on Marking of Plastic Explosives;
- Convention on the Physical Protection of Nuclear Material;
- International Convention against the Taking of Hostage;
- Convention on the Prevention and Punishment of Crime against Internationally Protected Persons, Including Diplomatic Agents;

- Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation;
- Convention for the Suppression of Financing of Terrorism;
- International Convention on the Suppression of Terrorism Bombings;
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental shelf and;
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

The Convention against the Transnational Organised Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air are being considered for ratification. It is expected that the instruments of ratification will be deposited before March 2002.

Some of the provisions of these instruments have been incorporated in our National Security Act of 1986. The thrust of this Act is to proscribe any conduct intended to assist persons from aiding any foreign power to the detriment of the security and safety of Botswana. Where citizens or persons owning allegiance to Botswana commit any acts of terrorism, the said acts are punishable under this Act. Regarding those provisions we have not yet incorporated into our domestic legislation, we have put in place a number of administrative procedures and mechanisms to ensure their implementation.

Sub-Paragraph e): The National Security Act does not specifically contain provisions to implement the relevant international Conventions. Its focus is primarily to prescribe acts prejudicial to the safety or interest of Botswana. It mostly deals with the protection of sensitive security information.

Procedures/Mechanisms for Asylum Seekers and Refugees

Sub-Paragraph f): With specific reference to operative paragraph 3(f) of resolution 1373 (2001), there are clear procedures in place which serve to screen and isolate people guilty of criminal activities from genuine asylum seekers. Where this is ascertainable, those individuals have been kept outside the refugee protection regime.

Sub-Paragraph g): Regarding paragraph 3(g) which requires countries to be on guard against abuses of the institution of asylum where people may claim political motivation in order to avoid extradition, again Botswana has been very vigilant. Where the claim of political motivation is not supported by evidence, the affected individuals are subjected to extradition proceedings. The Extradition Act does not require bilateral treaties for its enforcement. The countries to which extradition may be made under the Act are designated by the Minister acting within the powers granted under the Act. At the moment only Commonwealth countries are designated as countries to which extradition may be done.